

STATE OF INDIANA)
) SS:
COUNTY OF TIPPECANOE)

IN THE TIPPECANOE CIRCUIT COURT

CAUSE NO. 79C01-0204 MI-17

STATE OF INDIANA,)

Plaintiff,)

v.)

MILTON R. LEWIS,)
individually and doing business as)
M. R. LEWIS ENTERPRISES,)

Defendant.)

FILED

APR 01 2002

Boyd Michael
Clerk Tippecanoe Circuit Court

COMPLAINT FOR INJUNCTION, COSTS, AND CIVIL PENALTIES

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1 *et seq.*, and the Indiana Home Improvement Contracts Act, Ind. Code § 24-5-11-1 *et seq.*, for injunctive relief, civil penalties, costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c) and Ind. Code 24-5-11-14.

2. The Defendant, Milton R. Lewis, ("Lewis"), at all times relevant to this complaint was a resident of and conducted business in Tippecanoe County, Indiana.

FACTS

3. Since at least August 13, 2001, Lewis engaged in home improvement work under the assumed business name of M.R. Lewis Enterprises, with a principal place of business at 1102 North 1200 West, Battleground, Indiana.

4. On August 13, 2001, Defendant entered into a verbal contract with Tom and Vania Boehm of Lafayette, Indiana ("Boehms"), wherein Defendant agreed to install a sewage disposal system on a house owned by the Boehms, which was located at 5958 North Eastern Parkway, Thorntown, Indiana for a price of Two Thousand Seven Hundred Dollars (\$2,700.00).

5. Shortly after the Boehms agreed to the terms of the contract, the Defendant stated that he consulted with the Boone County Health Department and would need to perform additional work, thereby increasing the price of the contract. The Boehms stated that this was unacceptable and stated they would only pay the agreed upon contract price.

6. Defendant later telephoned the Boehms and stated that the Defendant had reached an agreement with the Boone County Health Department and that the Defendant would be able to perform the contracted work at the agreed upon price of Two Thousand Seven Hundred Dollars (\$2,700.00).

7. Defendant performed the work, and on or about August 15, 2001, the Defendant submitted a contract to the Boehms detailing the work performed, but at a cost of Three Thousand and Fifty Dollars (\$3,050.00). As the invoice included additional work beyond what was expressly agreed upon by the Boehms, the Boehms paid the previously agreed upon Two Thousand Seven Hundred Dollars (\$2,700.00).

8. On or about February 11, 2002, the Defendant filed a Mechanic's Lien on the Boehms' property for One Thousand Two Hundred and Nineteen Dollars (\$1,219.00), which

included the Three Hundred and Fifty Dollars (\$350.00) purportedly due under the contract, along with additional legal expenses and interest.

9. Defendant's verbal contract with the Boehms failed to include the requirements of Ind. Code §24-5-11-10(a)(1), *et seq.*

10. Defendant failed to provide a signed and dated contract to the Boehms.

COUNT I-VIOLATIONS OF THE HOME IMPROVEMENT CONTRACTS ACT

11. The service described in paragraph 4 is a "home improvement" as defined by Ind. Code § 24-5-11-3.

12. The transaction referred to in paragraph 4 above is a "home improvement contract" as defined by Ind. Code § 24-5-11-4.

13. Lewis is a "supplier" as defined by Ind. Code § 24-5-11-6.

14. Prior to commencing work, Lewis failed to provide the Boehms with a written home improvement contract, which included the following information in his contract with the Boehms:

- a. the name of the consumer and the address of the residential property that is the subject of the home improvement;
- b. the name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- c. the date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- d. a reasonably detailed description of the proposed home improvements or a statement that the specifications will be provided to the consumer before commencing any work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;
- e. the approximate starting and completion dates of the home improvement;

- f. a statement of any contingencies that would materially change the approximate completion date;
- g. signature lines for the home improvement supplier or the supplier's agent, and for each consumer who is to be a party to the home improvement contract with a legible or typed version of that person's name placed directly after or below the signature; and
- h. The date Lewis and the Boehms executed the contract.

15. By failing to provide a fully executed copy of the home improvement contract containing the dates the defendant and consumer executed the contract, as referenced in paragraph 10 violated the Home Improvement Contracts Act, Ind. Code §24-5-11-12.

COUNT II – VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

16. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 15 above.

17. The transaction referred to in paragraph 4 is a "consumer transaction" as defined by Ind. Code § 24-5-0.5-2(a)(1).

18. Defendant is a "supplier" as defined by Ind. Code §24-5-0.5-2(a)(3).

19. The violations of the Indiana Home Improvement Contracts Act referred to in paragraphs 14 and 15 constitute deceptive acts in accordance with Ind. Code § 24-5-11-14.

20. Defendant's performance of additional work, as referenced in paragraph 7, when he knew or reasonably should have known that the Boehms have not authorized the additional work, constitutes a deceptive act in accordance with Ind. Code §24-5-0.5-13.

21. Defendant's representation that he was entitled to a Mechanic's Lien on the Boehms' property, when he knew or reasonably should have known that he was not, as referenced in paragraph 8, constitutes a deceptive act in accordance with Ind. Code §24-5-0.5-3(a)(1).

**COUNT III – KNOWING AND INTENTIONAL VIOLATIONS
OF THE DECEPTIVE CONSUMER SALES ACT**

22. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1-21 above.

23. The misrepresentations and deceptive acts set forth in paragraphs 7, 8, and 9 were committed by Lewis with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests the Court enter judgment against the Defendant, enjoining the Defendant from the following:

a. in the course of entering into home improvement transactions, failing to provide to the consumer a written, completed home improvement contract that includes at a minimum the following:

- (1) The name of the consumer and the address of the residential property that is the subject of the home improvement;
- (2) The name and address of the home improvement supplier and each of the telephone numbers and names of any agent to whom consumer problems and inquiries can be directed;
- (3) The date the home improvement contract was submitted to the consumer and any time limitation on the consumer's acceptance of the home improvement contract;
- (4) A reasonably detailed description of the proposed home improvements;
- (5) If the description required by Ind. Code §24-5-11-10(a)(4) does not include the specifications for the home improvement, a statement that the specifications will be provided to the consumer before commencing any

work and that the home improvement contract is subject to the consumer's separate written and dated approval of the specifications;

- (6) The approximate starting and completion date of the home improvements;
- (7) A statement of any contingencies that would materially change the approximate completion date;
- (8) The home improvement contract price; and
- (9) Signature lines for the home improvement supplier or the supplier's agent and for each consumer who is to be a party to the home improvement contract with a legible printed or typed version of that person's name placed directly after or below the signature;

b. in the course of entering into home improvement transactions, failing to agree unequivocally by written signature to all of the terms of a home improvement contract before the consumer signs the home improvement contract and before the consumer can be required to make any down payment;

c. in the course of entering into home improvement transactions, failing to provide a completed home improvement contract to the consumer before it is signed by the consumer;

d. representing either orally or in writing that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, in which the supplier knows or should reasonably know it does not have;

e. engaging in the replacement or repair of the subject of a consumer transaction if the consumer has not authorized the replacement or repair, and if the supplier knows or should reasonably know that it is not authorized;

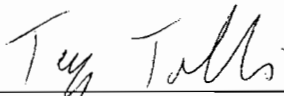
AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendant for the following relief:

- a. consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2), for reimbursement of all deposits, down payments and other funds remitted by the Boehms for the home improvement work in an amount to be determined at trial;
- b. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- c. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;
- d. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and
- e. all other just and proper relief.

Respectfully submitted,

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By:


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